

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

GLORIFINA TRINIDAD, NANA I AM,

Case No. 2:16-cv-00818-MMD-VCF

Plaintiff,

ORDER

v.

CALIBER HOME LOANS, INC.; BANK
OF NEW YORK MELLON N.A.; SUMMIT
REAL ESTATE SERVICES, LLC,

Defendant.

I. INTRODUCTION

Before the Court is a motion to dismiss (“Motion”) filed by Defendants Caliber Home Loans, Inc. (“Caliber”), The Bank of New York Mellon, as Trustee for CIT Mortgage Loan Trust 2007-1 (“the Bank”) and Summit Real Estate Services, LLC (“Summit”) (collectively, “Defendants”). (ECF No. 10.) Glorifina Trinidad (“Trinidad” or “Plaintiff”) and “Nana I Am”¹ have responded² and Defendants have replied. (ECF Nos. 20, 21.)

II. RELEVANT BACKGROUND

The relevant facts are taken from the Complaint and the Motion.

The Complaint alleges that Defendants are debt collectors attempting to collect a debt that the Bank “received [as] an assignment or transfer of a mortgage, while the debt

¹“Nana I Am” is identified as a plaintiff in the case caption and signed the Complaint. However, other than the first two paragraphs, the Complaint for the most part refers to “Plaintiff” in the singular. (ECF No. 1.)

²The Court gave Plaintiffs several extensions of time to respond to the Motion. (ECF Nos. 14, 18.)

1 was in default.” (ECF No. 1 at 6.) The Complaint alleges that “Plaintiff is unable to
 2 determine the validity of defendant’s alleged debt and the amounts they claim is due and
 3 owing.” (*Id.* at 9.) Exhibit A to the Complaint includes a copy of a Notice of Trustee’s Sale
 4 under a deed of trust dated February 27, 2007 (“DOT”), identifying the trustee as Trinidad
 5 and the property subject to the sale as 6507 Bethalo Street in Las Vegas, Nevada (“the
 6 Property”). (*Id.* at 20-21.) The beneficial interest under the DOT was assigned to the Bank
 7 in December 2010. (ECF No. 10-10.) On September 8, 2014, Summit was substituted as
 8 a trustee under the DOT. (ECF No. 10-11.) On September 10, 2014, Summit recorded a
 9 notice of breach and election to sale against the Property. (ECF No. 10-12.) The Property
 10 was foreclosed upon on March 4, 2015. (ECF No. 10-15.)

11 The Complaint asserts a single claim for violation of the Fair Debt Collections
 12 Practices Act (“FDCP”), 15 USC § 1692. (ECF No. 1.) The Complaint further alleges that
 13 “Plaintiff seeks judicial determination as to whether the recorded Assignment of Deed of
 14 Trust (Mortgage) and the alleged Note executed by MERS conferred any rights, title and
 15 interest in the Plaintiff’s subject property.” (*Id.* at 12.) However, the Complaint can only be
 16 reasonably construed to assert a single claim under the FDCP.³

17 **III. LEGAL STANDARD**

18 A court may dismiss a plaintiff’s complaint for “failure to state a claim upon which
 19 relief can be granted.” Fed. R. Civ. P. 12(b)(6). A properly pleaded complaint must provide
 20 “a short and plain statement of the claim showing that the pleader is entitled to relief.”
 21 Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While
 22 Rule 8 does not require detailed factual allegations, it demands more than “labels and
 23 conclusions” or a “formulaic recitation of the elements of a cause of action.” *Ashcroft v.*
 24 *Iqbal*, 556 US 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 555). “Factual allegations

25
 26 ³The Motion addresses other claims, including an injunctive relief claim,
 27 challenging the assignment of the note and DOT, to the extent they are asserted in the
 28 Complaint. (ECF No. 10 at 9-11.) The Complaint cannot be construed to allege a claim
 for injunctive relief to undo the foreclosure sale or to challenge the assignment. Indeed,
 “Plaintiff denies any loan was received.” (ECF No. 1 at 9.)

1 must be enough to raise a right to relief above the speculative level.” *Twombly*, 550 U.S.
2 at 555. Thus, “[t]o survive a motion to dismiss, a complaint must contain sufficient factual
3 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 556
4 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570).

5 In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to
6 apply when considering motions to dismiss. First, a district court must accept as true all
7 well-pleaded factual allegations in the complaint; however, legal conclusions are not
8 entitled to the assumption of truth. *Id.* at 678-79. Mere recitals of the elements of a cause
9 of action, supported only by conclusory statements, do not suffice. *Id.* at 678. Second, a
10 district court must consider whether the factual allegations in the complaint allege a
11 plausible claim for relief. *Id.* at 679. A claim is facially plausible when the plaintiff’s
12 complaint alleges facts that allow a court to draw a reasonable inference that the
13 defendant is liable for the alleged misconduct. *Id.* at 678. Where the complaint fails to
14 “permit the court to infer more than the mere possibility of misconduct, the complaint has
15 alleged — but it has not ‘shown’ — ‘that the pleader is entitled to relief.’” *Id.* at 679 (quoting
16 Fed. R. Civ. P. 8(a)(2)) (alteration omitted). When the claims in a complaint have not
17 crossed the line from conceivable to plausible, the complaint must be dismissed.
18 *Twombly*, 550 U.S. at 570. A complaint must contain either direct or inferential allegations
19 concerning “all the material elements necessary to sustain recovery under *some* viable
20 legal theory.” *Id.* at 562 (quoting *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1106
21 (7th Cir. 1984)).

22 Mindful of the fact that “[t]he Supreme Court has instructed the federal courts to
23 liberally construe the ‘inartful pleading’ of *pro se* litigants,” the Court will view Plaintiff’s
24 pleadings with the appropriate degree of leniency. *Eldridge v. Block*, 832 F.2d 1132, 1137
25 (9th Cir. 1987) (quoting *Boag v. MacDougall*, 454 U.S. 364, 365 (1982)).

26 Generally, a court may not consider any material beyond the pleadings in ruling on
27 a Rule 12(b)(6) motion to dismiss. *United States v. Ritchie*, 342 F.3d 903, 907-08 (9th Cir.
28 2003). There are three exceptions to this rule: (1) a court may consider documents

“‘properly submitted as part of the complaint’ on a motion to dismiss;” (2) if “documents are not physically attached to the complaint,” incorporation by reference is proper “‘if the documents’ authenticity . . . is not contested’ and ‘the plaintiff’s complaint necessarily relies’ on them,” *Lee v. Los Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001) (quoting *Parrino v. FHP, Inc.*, 146 F.3d 699, 705-06 (9th Cir. 1998); and (3) “a court may take judicial notice of ‘matters of public record.’” *Id.* (quoting *Mack v. S. Bay Beer Distribs.*, 798 F.2d 1279, 1282 (9th Cir. 1986). The Court thus grants Defendants’ request to take judicial notice of publicly recorded records attached to their Motion. (ECF Nos. 10-1 through 10-5.)

IV. DISCUSSION

Defendants argue that the FDCPA claim fails as a matter of law because Defendants are not debt collectors covered under the FDCPA. The Act generally defines a debt collector as “any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.” 15 U.S.C. § 1692a(6). However, foreclosing on a property pursuant to a deed of trust is not a debt collection within the meaning of the Act. *See Warwick v. Bank of New York Mellon*, Case No. CV 15-3343 SS, 2016 WL 2997166 at *16 (C.D. Cal. May 23, 2016) (citing *Saldate v. Wilshire Credit Corp.*, 711 F. Supp. 2d 1126, 1132 (E.D. Cal. 2010)).

Plaintiff makes general allegations that each Defendant is a debt collector. (ECF No. 1 at 2.) However, the gist of the specific allegations offered to support Plaintiff’s claim is that Caliber sent Plaintiff notices demanding payment on a debt that the Bank “received [as] an assignment or transfer of a mortgage.” (ECF No. 1 at 6.) While the Bank and Summit are both identified as alleged debt collectors, the only other allegation involving Summit is that it was “named as the seller of Plaintiff’s property” in Exhibit A (i.e., the Notice of Trustee’s Sale).

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1 Because the Bank and Caliber are not debt collectors subject to the Act, Plaintiff
2 cannot assert a claim for violation of the Act against these Defendants. As noted, Plaintiff
3 makes no specific allegations that Summit even attempted to collect on the debt.
4 Summit's only involvement in the apparent foreclosure sale was its designation as "the
5 seller of Plaintiff's property." (ECF No. 1 at 7.)

6 **V. CONCLUSION**

7 The Court notes that the parties made several arguments and cited to several
8 cases not discussed above. The Court has reviewed these arguments and cases and
9 determines that they do not warrant discussion or reconsideration as they do not affect
10 the outcome of the Motion.

11 It is therefore ordered that Defendants' motion to dismiss (ECF No. 10) is granted.

12 The Clerk is directed to enter judgment in accordance with this Order and close
13 this case.

14 DATED THIS 13th day of January 2017.

A handwritten signature in blue ink, appearing to read "Miranda M. Du", is written over a horizontal line.

MIRANDA M. DU
UNITED STATES DISTRICT JUDGE